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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,238	04/01/2004	Joseph M. Asher	069547.0193	9139
5073	7590	09/08/2006		
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980				
			EXAMINER POND, ROBERT M	
			ART UNIT 3625	PAPER NUMBER

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/816,238

Applicant(s)

ASHER ET AL.

Examiner

Robert M. Pond

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/1/04; 6/4/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

2. Claims 33 and 37 are objected to because of the following informalities:
typographical error or misprint of the word "bet." For examining purposes, examination was based on "bid." Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 21-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The Applicant is claiming software.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and

use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 35-37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention: first count and second count and support for use and determining.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 21-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Applicant is claiming software lacking embodiment in computer readable medium executable by a computer processor.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-7, 9-17, 19-27, and 29-37 are rejected under 35 USC 102(b) as being anticipated by Krueger (IDS, US 2002/0062276).

Krueger teaches all the limitations of claims 1-7, 9-17, 19-27, and 29-37. For example Krueger discloses a wireless distributed real time bidding and tracking system for live events, such as a live silent auction (see at least abstract; page 3, 0034). Krueger further discloses:

- a first local client presenting an auction display at an auction; a second local client presenting the auction display at the auction; and a local network device operable to receive one or more unique bids on an item from each local client and communicate the received bids to a server, the item described in a central repository on the server and the server operable to determine a winning bid for the item based on predetermined criteria. (see at least Fig. 1 & 2; 0013-0016; 0019-0059).

- bid sheet: Inherent in Krueger are the structures necessary to permit the creation and use of a bid sheet. For example, Krueger discloses the auction house creates list of items to be bid, tracking bids, recognizing the winner bidder, notifying the winning bidder, etc. (see at least 0026).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8, 18, and 28 are rejected under 35 USC 103(a) as being unpatentable over Krueger (IDS, US 2002/0062276) in view of Ziarno (US 5,663,547).

Krueger teaches all the above as noted under the 102(b) rejection and teaches a) silent auction system and method, b) making a payment using VISA, and c) bidder identity schemes, but does not specifically disclose using a card reader. Ziarno teaches a fund raising system and method that is used for silent bidding and further teaches the use of smartcards, credit cards, debit cards, and card reader for bidder identification and payment (see at least abstract; Fig. 21A (307); col. 5, lines 13 through col. 6, line 8; col. 92, lines 7-14). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to

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modify the system and method of Krueger to support smartcards, credit cards, or debit cards using a card reader as taught by Ziarno, in order to facilitate bidder identification and/or payment services.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

EP 1041502 (Phone.com) 04 October 2000; teaches real-time auctioning system and methods using wired or wireless devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service

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Representative or access to the automated information system, call 800-786-
9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Robert M. Pond', written in a cursive style.

Robert M. Pond
Primary Examiner
September 4, 2006